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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

PEDRO MARCELO MACANCELA BUESTAN, *Petitioner*, v. CORY CHU, *in his official capacity*, et al., *Respondents*.	Hon. Michael E. Farbiarz, U.S.D.J. Civil No. 25-16034

ANSWER TO THE PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

PRELIMINARY STATEMENT

On September 24, 2025, U.S. Immigration and Customs Enforcement ("ICE") detained Petitioner pending removal proceedings for his presence in the United States without admission or parole. Petitioner now brings a habeas action under 28 U.S.C. § 2241, alleging that the Immigration and Nationality Act ("INA") and Due Process Clause require ICE to release him. The Court should dismiss or deny the petition. Petitioner's detention is lawful under 8 U.S.C. § 1225(b), and mandatory detention under § 1225(b) comports with due process. Even if it did not, the appropriate remedy is a bond hearing conducted by an Immigration Judge rather than immediate release. Accordingly, the Court should dismiss or deny the petition.

FACTUAL BACKGROUND

I. Relevant Statutory and Regulatory Background

This case concerns the detention authorities for aliens pending removal proceedings. Below, we discuss the relevant statutory and regulatory backdrop for the two detention provisions at issue—§ 1225(b) and 8 U.S.C. § 1226(a)—as well as the framework for adjudicating removal proceedings under 8 U.SC. § 1229a.

A. Detention Under 8 U.S.C. § 1225(b)

Section 1225 applies to "applicants for admission," who are defined as "alien[s] present in the United States who [have] not been admitted" or "who arrive[] in the United States." 8 U.S.C. § 1225(a)(1). Applicants for admission "fall into one of two

categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Section 1225(b)(1) applies to (1) "arriving aliens" and (2) aliens who "ha[ve] not been admitted or paroled into the United States" and have not been "physically present in the United States" for two years. 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). "Arriving aliens" are defined by regulation as "an applicant for admission coming or attempting to come into the United States at a port-of-entry ..." 8 C.F.R. § 1.2. These aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). If the alien does not indicate an intent to apply for asylum, express fear of persecution, or does not "have such a fear" after inquiry by an officer, the alien is detained until removed. *Id.* § 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2), which Respondents argue applies to Petitioner here, is "broader" and "serves as a catchall provision." *Jennings*, 583 U.S. at 287. Indeed, it "applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* Under § 1225(b)(2), an alien "who is an applicant for admission" shall be detained for a removal proceeding "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A); *see Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) ("for aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'") (citing *Jennings*, 583 U.S. at 299)). Still, the U.S. Department of Homeland Security ("DHS") has the

sole discretionary authority to temporarily release on parole "any alien applying for admission to the United States" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." *Id.* § 1182(d)(5)(A).

B. Detention Under § 1226(a)

Section 1226 provides for arrest and detention on a warrant "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under § 1226(a), immigration officials may detain an alien during removal proceedings, release the alien on bond, or release the alien on conditional parole.[1] By regulation, immigration officers can release an alien if the alien demonstrates that he "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). An alien can also request that an Immigration Judge conduct a custody redetermination hearing any time before a final order of removal is issued for the alien. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

At a custody redetermination hearing, the Immigration Judge may continue detention or release the alien on bond. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). Immigration Judges have broad discretion in deciding whether to release an alien on bond. *Matter of Guerra*, 24 I. & N. Dec. 37, 39–40 (BIA 2006) (listing nine factors for

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[1] Being "conditionally paroled under the authority of § 1226(a)" is distinct from being "paroled into the United States under the authority of § 1182(d)(5)(A)." *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007) (holding that because release on "conditional parole" under § 1226(a) is not a parole, the alien was not eligible for adjustment of status under § 1255(a)); *Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 749 (BIA 2023).

Immigration Judges to consider). But regardless of the factors Immigration Judges consider, an alien "who presents a danger to persons or property should not be released during the pendency of removal proceedings." *Id.* at 38.

C. Removal Proceedings Under 8 U.S.C. § 1229a

Removal proceedings under § 1229a are commonly referred to as "full removal proceedings" or "240 removal proceedings" due to the statutory section of the INA in which they appear. 8 U.S.C. § 1229a; INA § 240. The proceedings take place before an Immigration Judge. 8 U.S.C. § 1229a(a)(1), (b)(1). Aliens in 1229a proceedings have an opportunity to apply for relief from removal. *See, e.g.*, 8 U.S.C. § 1158 (asylum); 8 U.S.C. § 1229b(b) (cancellation of removal for nonpermanent residents); 8 U.S.C. § 1255 (adjustment of status). And the proceedings are adversarial, allowing the alien the right to counsel, examine and present evidence, and cross-examine witnesses. 8 U.S.C. § 1229a(b)(4). Either party may appeal the Immigration Judge's decision to the Board of Immigration Appeals ("BIA"). 8 U.S.C. § 1229a(b)(4)(C); *see also* 8 C.F.R. § 1240.15. And if the BIA issues a final order of removal, an alien may also seek judicial review at a U.S. court of appeals through a petition for review. 8 U.S.C. § 1252.

II. Petitioner's Immigration History

Petitioner is a native and citizen of Ecuador who unlawfully entered the United States without inspection, as he alleges, in February 2000. *See* ECF No. 1 ("Pet."), ¶ 25; *see also* Ex. A, Notice to Appear (the "NTA"). In February 2009, Petitioner was convicted of driving while intoxicated. Pet. ¶ 4. In June 2016, before any arrest or

process with DHS, Petitioner submitted an application for asylum or withholding of removal. Pet. Ex. A. In or around September 2025, DHS conducted an asylum interview. Pet. ¶ 26. On September 22, 2025, DHS issued a Notice to Appear charging Petitioner as being present in the United States without being admitted or paroled in violation of 8 U.S.C. § 1182(a)(6)(A)(i), pending removal proceedings against him under 8 U.S.C. § 1229a. *See* NTA.[2]

On September 24, 2025, DHS served Petitioner with an arrest warrant issued under 8 U.S.C. §§ 1226 and § 1357. *See* Ex. B, Warrant for Arrest of Alien ("Form I-200"). Petitioner was taken into custody the same date. *See* Ex. C, Record of Deportable/Inadmissible Alien ("Form I-213").[3] He has been in removal proceedings ever since and detained pursuant to § 1225(b)(2) pending his removal proceedings. On September 30, 2025, ICE moved Petitioner from his original detention placement at Delaney Hall in New Jersey to Adams County Correctional Facility in Natchez, Mississippi. *See* Ex. D, Notice to EOIR ("I-830").

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[2] A Notice to Appear is a charging document, i.e., "the written instrument which initiates proceedings before an Immigration Judge." 8 C.F.R. § 1103.13.

[3] As discussed more fully throughout this brief, this provision states that an alien "who is an applicant for admission" shall be detained pending removal proceedings "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 12255(b)(2)(A). The INA defines an "applicant for admission" as an "alien present in the United States who has not been admitted" or who "arrives in the United States." 8 U.S.C. § 1225(a)(1). Petitioner acknowledges he is present in the United States but has "never been admitted." *See* Pet. ¶¶ 25 (Petitioner entered without inspection), 39.

III. Procedural History

Petitioner filed this habeas petition on September 26, 2025, challenging his detention under § 1225(b)(2). Petitioner argues that the proper authority for his detention arises under § 1226(a), and so he claims that any detention under 1225(b)(2)—which, unlike § 1226(a), is mandatory and does not allow for a bond hearing—violates the INA and its regulations, the Administrative Procedure Act ("APA"), and Due Process Clause. *See, e.g.,* Pet. ¶¶ 33-39, 54-68. Petitioner seeks release or, in the alternative, an order directing Respondents to schedule a bond hearing before an Immigration Judge. *See id.* As noted above, ICE transferred Petitioner from New Jersey to Mississippi on September 30, 2025. On October 10, 2025, the Court directed Respondents to answer the petition on or before Monday, October 13, 2025. *See* ECF No. 3. Respondents moved for a three-day extension to account for the federal holiday on October 13, 2025, and the need to collect records from Adams County Correctional Facility. ECF No. 5.[4] Respondents now move to dismiss the petition in full.

STANDARD OF REVIEW

28 U.S.C. § 2241(c)(3) authorizes a court to grant a writ of habeas corpus where a prisoner "is in custody in violation of the Constitution or laws or treaties of the United States." Rule 4 of the Rules Governing Section 2254 Cases in the United

[4] The Court neither granted nor denied the extension request. Respectfully, the Respondents are filing on October 14, 2025, in keeping with the spirit of Fed. R. Civ. P. 6(a)(1)(C), because this Office required factual confirmations and filing approval from DHS which took place today.

States District Courts, which is applicable to § 2241 petitions through Rule 1(b), provides this Court with the authority to dismiss a habeas petition if it "plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief." *See also Moncrieffe v. Yost*, 367 Fed. Appx. 286, 288 n.2 (3d Cir. 2010) (noting summary dismissal of a § 2241 habeas petition is appropriate pursuant to Rule 4 of the Rules Governing Section 2254 Cases). "Federal courts are authorized to dismiss summarily any habeas petition that appears legally insufficient on its face." *McFarland v. Scott*, 512 U.S. 849, 856 (1994) (citing 28 U.S.C. § 2254, Rule 4).

LEGAL ARGUMENT

The Court should dismiss the petition because Petitioner's detention is lawful. As discussed below, the plain text of the INA demonstrates that Petitioner is correctly considered an "applicant for admission" and therefore subject to mandatory detention under § 1225(b)(2). Petitioner's detention also comports with due process.

I. Petitioner is Properly Detained Under 8 U.S.C. § 1225(b)(2)

In Counts 1 through 4, Petitioner challenges his detention under § 1225(b)(2), on grounds that applying that authority to him violates the INA, its regulations, and the APA. *See* Pet. ¶¶ 50-59. But Petitioner is incorrect as a matter of plain meaning. The text of § 1225(b)(2) is unambiguous. It allows for mandatory detention to any alien "present in the United States who has not been admitted." 8 U.S.C. § 1225(a),

(b)(2). Petitioner falls within that category, and his arguments to the contrary are unavailing.

A. Petitioner's Detention is Lawful Under the Plain Text of the INA

Where, as here, the question is one of statutory interpretation, "we start where we always do: with the text of the statute." *Van Buren v. United States*, 593 U.S. 374, 381 (2021). Section 1225(b)(2) provides, "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained" pending removal proceedings. This provision has three key components. The alien must be: (1) an "applicant for admission"; (2) who is "seeking admission"; and (3) an examining immigration officer has determined the alien "is not clearly and beyond a doubt entitled to be admitted." Petitioner meets all three requirements.

Petitioner is an "applicant for admission" under the INA. An "applicant for admission" means any "alien present in the United States who has not been admitted" or "who arrives in the United States." 8 U.S.C. § 1225(a)(1). Petitioner does not dispute that he is present in the United States but has "never been admitted." *See* Pet. ¶¶ 3, 18. Indeed, DHS issued a Notice to Appear on the basis that Petitioner is "an alien present in the United States without being admitted or paroled." NTA (citing 8 U.S.C. § 1182(a)(6)(A)(i)). Petitioner meets the statutory definition of an "applicant for admission" under § 1225(a)(1).

Petitioner is also "seeking admission." The INA defines "admission" as "the lawful entry of the alien into the United States after inspection and

authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). When it comes to interpreting "seeking admission" in § 1225(b)(2), the phrase must be read in context with "applicant for admission" as defined by § 1225(a). *See Abramski v. United States*, 573 U.S. 169, 179 (2014) (instructing courts to "interpret the relevant words not in a vacuum, but with reference to the statutory context, 'structure, history and purpose.'" (quotation omitted)). As noted above, Congress defined 'applicant for admission' under § 1225(a) to include both those who arrive in the United States *and* those present without admission. *See* 8 U.S.C. § 1225(a)(1). Both are understood to be "seeking admission" under § 1225(a)(1). *See Matter of Lemus*, 25 I. & N. 734, 743 (BIA 2012) (recognizing "'applicant for admission'" includes "not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission.").

This is not to say the words "seeking admission" and "applicant for admission" are identical. The former is broader than the latter. For example, the INA contemplates that "stowaways" may seek admission by requesting asylum, yet stowaways are excluded from the definition of "applicant of admission." 8 U.S.C. § 1225(a)(2). In addition, an applicant for admission must be physically present in the United States, while an alien can "seek admission" in the United States *or* outside of it, such as in an embassy before a consular officer. *See Romero v. Hyde*, No. 25-11631, 2025 WL 2403827, at *9 (D. Mass. Aug. 19, 2025) (although ruling against ICE, noting terms have slightly different breadth). That is why, in § 1225(a)(3),

immigration officers must inspect all aliens "who are applicants for admission *or otherwise* seeking admission." 8 U.S.C. § 1225(a)(3) (emphasis added).

The relevant phrases play out in a commonsense way in § 1225(b)(2). The statute begins with a limiting clause: the subsection applies to "any applicant for admission," which means only those physically present and who can be detained. This avoids the conclusion that § 1225(b)(2) applies to those "seeking admission" from abroad; say, in an embassy. Having made clear that § 1225(b)(2) applies only to those present, it continues with a second clause" mandating detention if the immigration officer finds the "alien seeking admission" is not entitled to it. *See Adamowicz v. I.R.S.*, 552 F. Supp. 2d 355, 367–68 (S.D.N.Y. 2008) ("'[A] limiting clause or phrase ... should ordinarily be read as modifying only the noun or phrase that it immediately follows.'").

Here, Petitioner is an applicant for admission who is present in the United States without being admitted. He satisfies the second element, "seeking admission," under § 1225(b)(2).[5]

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[5] Further, here, Petitioner expressly applied for asylum in 2016—well before he was arrested and detained in September 2025. Pet., Ex. A. He thus falls squarely within § 1225(b)(A)(ii) ("Claim for asylum"). *See Casun v. Hyde*, No. 25-0427, 2025 WL 2806769, at *1 (D.R.I. Oct. 2, 2025) (observing that "[i]t is clear from a plain reading of the statute that Section 1225 is for people entering the United States; people who do not have status; people who must be inspected and admitted; and/or people seeking asylum."); *Vazquez v. Feeley*, No. 25-01542, 2025 WL 2676082, at *13 (D. Nev. Sept. 17, 2025) (observing that the phrase "seeking admission . . . entails some kind of affirmative action taken to obtain authorized entry"). Accordingly, even under a narrower reading of the INA, ICE correctly detained Petitioner under § 1225(b) because Petitioner engaged in "affirmative action taken to obtain authorized entry" prior to his arrest.

An examining immigration officer charged Petitioner with being inadmissible under the INA. Petitioner also meets the final element, which is that an examining immigration officer determined he "is not clearly and beyond a doubt entitled to be admitted." *See* 8 U.S.C. § 1225(b)(2). Here, an examining officer made that determination when DHS issued a Notice to Appear charging Petitioner with being inadmissible under the INA. *See* NTA (citing 8 U.S.C. § 1182(a)(6)(A)(i)).

For the reasons above, Respondents respectfully submit that Petitioner is an "applicant for admission" under the plain meaning of § 1225(a)(1), and subject to mandatory detention per the text of § 1225(b)(2)(A). *See Vargas Lopez v. Trump*, No. 25-526, 2025 WL 2780351, at *9 (D. Neb. Sept. 30, 2025) (finding alien properly detained under § 1225(b)(2) because he was present in the United States without having been admitted, and thus an applicant for admission under § 1225(a)); *Chavez v. Noem*, No. 25-cv-02325, 2025 WL 2730228, at *4-5 (S.D. Cal. Sept. 24, 2025) (same); *Pipa-Aquise v. Bondi*, No. 25-1094, 2025 WL 2490657, at *1 (E.D. Va. Aug. 5, 2025) (same); *Pena v. Hyde*, No. 25-11983, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025) (upholding detention under § 1225(b)(2) of alien "present in the country but [who] has not yet been lawfully granted admission"); *but see Rivera Zumba v. Bondi,* No. 25-14626 (KSH), 2025 WL 2753496, at *7–9 (D.N.J. Sept. 26, 2025) (holding that a noncitizen residing in the United States for 20 years was not affirmatively "seeking admission" and therefore not subject to § 1225(b)(2));[6] *Mugliza Castillo*, 2:25-cv-

[6] Respondents note that the Court in *Rivera Zumba*, while rejecting DHS's reading of §§ 1225 and 1226, nonetheless suggests in dicta that "taking affirmative steps" to seek admission may render detention under § 1225 proper. *See* 2025 WL

16219-MEF (D.N.J.), Dkt. No. 11 (ordering that a habeas petitioner "be treated by the Respondents as detained under § 1226."). The Court should dismiss Counts 1 through 4 of the petition on this basis alone.

B. The Supreme Court's Decision in *Jennings* and Recent BIA Decisions Support Applying § 1225(b)(2)

Respondents reading of the statutory text is supported by recent Supreme Court and BIA precedent. As the Supreme Court recognized, applicants for admission under the INA "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). The former, which is not relevant here, applies to arriving aliens and "certain other" aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Id.* But the latter provision—8 U.S.C. § 1225(b)(2), which is at issue here—is a "broader . . . catchall provision" applying to "all applicants for admission not covered by § 1225(b)(1)." *Id.* Here, Petitioner is an applicant for admission who is not covered by § 1225(b)(1), and so he falls within the "catchall provision" in § 1225(b)(2).

The BIA is the highest-level administrative body for interpreting immigration law. It, too, recently adopted this understanding of § 1225(b)(2) in a decision that binds all Immigration Judges and is persuasive authority here. *See Matter of Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) (interpreting § 1225(b)(2)(A) to require

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2753496, at *7–9 (quoting *Vazquez v. Feeley*, 2025 WL 2676082, at *13). That narrower view applies here because Petitioner applied for asylum before his arrest and detention.

detention of aliens present in the United States without admission); *see also Ahmed v. Ashcroft*, 341 F.3d 214, 217 (3d Cir. 2003) ("We defer to the BIA's interpretation of the Immigration and Nationality Act ("INA") unless the interpretation is 'arbitrary, capricious, or manifestly contrary to the statute.'").

The BIA's interpretation of § 1225(b)(2) follows directly from the plain text. As discussed above, § 1225(b) requires ICE to detain two types of "applicants for admission"—those who have "arrived in the United States" and those "who ha[ve] not been admitted." 8 U.S.C. § 1225(a)(1). "[A]rrive[d] in the United States" means an alien who has just entered the country—such as at the airport or at the U.S. border—or did so very recently. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020). But aliens "have not been admitted" if no immigration officer inspected them or authorized them to be here. *See* 8 U.S.C. § 1101(a)(13)(A) (defining "admission"). Petitioner falls into that latter category. As the Supreme Court recognized, and as the BIA has held, the latter category is broader and includes Petitioner because he is present in the United States without admission or parole. *See Jennings*, 583 U.S. at 287 (noting § 1225(b)(2) is a "broader," "catchall provision" that "applies to all applicants for admission not covered by § 1225(b)(1)").

C. Petitioner's Arguments Cannot Re-Write § 1225's Plain Meaning

Petitioner's contention that § 1226(a) provides the sole authority for his detention, *see* Pet. ¶¶32-37, is mistaken for several reasons.[7] Petitioner describes §

[7] Petitioner's arguments largely track those accepted by almost all courts to have considered this issue. *See* Pet. ¶¶ 35-38 (collecting cases); *see also Rivera Zumba*, 2025 WL 2753496. For the reasons above, Respondents respectfully disagree with those decisions and Petitioner's arguments here.

1226(a) as a "default" provision that applies to individuals "'pending a decision on whether the [noncitizen] is to be removed from the United States.'" Pet. ¶¶ 34 (quoting 8 U.S.C. § 1226(a)). But § 1225 is much narrower; it covers only "applicants for admission," which, as noted above, is a specifically defined subset of aliens that explicitly includes those "present in the United States who ha[ve] not been admitted." 8 U.S.C. § 1225(a). Petitioner fits squarely within that definition—even more so given his 2016 application for asylum. And where, as here, there is any arguable overlap between two statutory provisions, the "commonplace rule of statutory interpretation is that the specific governs the general, particularly when Congress has targeted specific solutions in the context of a general statute." *Aristy-Rosa v. Attorney Gen.*, 994 F.3d 112, 116 n.4 (3d Cir. 2021) (quotations omitted). Here, then, the specific detention authority in § 1225 governs over the general or "default" authority described in § 1226.

Along these lines, Petitioner's reading that § 1225(b)(2)(A) "is premised on the idea that an inspection occurs near the border and shortly after arrival," Pet. ¶ 51, fails to comport with the overall structure of the INA. Indeed, this view appears to ignore half the definition of "applicant for admission." Congress defined an applicant for admission to mean two things: (1) an arriving alien; *or* (2) an alien present without being admitted. *See* 8 U.S.C. § 1225(a)(1). The former is someone "coming or attempting to come into the United States at a port of entry. 8 C.F.R. § 1.2 (defining "arriving alien"). This covers the situation Petitioner describes—an encounter at the

border or soon thereafter. *See Thuraissigiam*, 591 U.S. at 139 (finding § 235(a) applied to aliens "taken into custody the instant [they] attempted to enter the country (as would have been the case had he arrived at a lawful port of entry)" and those who "succeeded in making it [a short distance] into U. S. territory before [being] caught").

But there is also a second type of person covered under y § 1225(b)(2)—an alien present without being admitted—which must mean something else. Petitioner falls in this "broader," or "catchall" category. *See Jennings*, 583 U.S. at 287. He is an alien present in the United States without being admitted within the definition of § 1225(a)(1), so the "catchall provision" in § 1225(b)(2), which "applies to all applicants for admission not covered by § 1225(b)(1)," governs. *Id.* [8]

The Laken Riley Act ("LRA"), which added 8 U.S.C. § 1226(c)(1)(E) to the statute, does not alter this conclusion. *See* Pet. ¶ 34. That provision now requires mandatory detention (i.e., detention without bond) for various types of "inadmissible"

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[8] Even though § 1225(b) requires the detention of both types of applicants for admission, immigration officials did not always interpret it that way. Specifically, DHS's predecessor agency, the U.S. Immigration and Naturalization Service ("INS"), read § 1225(b) to apply only to those who have arrived in the United States. That is, while INS detained arriving aliens, INS chose whether to detain aliens who have not been admitted. *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312-01, 10323, 1997 WL 93131, (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination."). Aliens present without admission were detained under § 1226(a). *See id.* As of July 8, 2025, however, ICE has taken the position that all applicants for admission, including those who are present without admission, are subject to mandatory detention under § 1225(b)(2). ICE takes this position because it accords with the plain language of the statute and is consistent with recent caselaw from the BIA, the highest-level administrative body for interpreting immigration law. *See Matter of Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

aliens, which Petitioner contends, "reaffirmed that § 236(a) covers noncitizens who are not subject to section (c) but are charged as removable under § 212(a)(6)(A) or 212(a)(7)." *Id.* Respondents disagree.

The LRA arose, according to Congress, after an inadmissible alien "was paroled into this country through a shocking abuse of that power." 171 Cong. Rec. H278 (daily ed. Jan 22, 2025). (statement of Rep. McClintock). Congress passed the law out of concern that the executive branch "ignore[d] its fundamental duty under the Constitution to defend its citizens." *Id.* at H269 (statement of Rep. Roy). One member of Congress noted this redundancy, stating that "every illegal alien is currently required to be detained by current law throughout the pendency of their asylum claims." *Id.* at H278 (statement of Rep. McClintock). The LRA thus reflects a "congressional effort to be doubly sure" that such unlawful aliens are detained. *See Barton v. Barr*, 590 U.S. 222, 239 (2020) (recognizing redundancies in statutory drafting are "common . . . sometimes in a congressional effort to be doubly sure."). That does not change what Congress intended when it passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), which added 8 U.S.C. §§ 1225(a)(1) to the INA. *See* Pub. L. No. 104-208, § 302, 110 Stat. 3009-546; *see also Almendarez-Torres v. United States*, 523 U.S. 224, 237 (1998) ("These later-enacted laws, however, are beside the point. They do not declare the meaning of earlier law. ... or a change in the meaning of an earlier statute."); *see also S. Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 355 (1998) ("'[T]he views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one.'") (quoting *United States v.*

Philadelphia Nat. Bank, 374 U.S. 321, 348–349 (1963)). In sum, nothing in the LRA requires that the alien who falls under § 1225(b)(2) be treated as an alien detained under § 1226(a).

Indeed, the legislative history of the INA supports Respondents' reading of the INA, and cuts against Petitioner's view that detention under § 1225(b)(2) is improper.[9] Congress passed the IIRIRA to correct "an anomaly whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc). It "intended to replace certain aspects of the [then] current 'entry doctrine,' under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry." *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225). Respondents' reading of § 1225(b)(2) makes sense because it would not put aliens who "crossed the border unlawfully" in a better position than those "who present themselves for inspection at a port of entry." *Id.* Otherwise, aliens who presented at a port of entry would be subject to mandatory detention under § 1225, but those who crossed illegally would be eligible for a bond under § 1226(a).

Respondents' reading of § 1225(b)(2) also works hand in hand with § 1226(a)'s

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9 To be sure, when the plain text of a statute is clear, that meaning controls, and courts "need not consider ... extra-textual evidence" like legislative "history, purpose, and post-enactment practice." N.L.R.B. v. SW General, Inc., 580 U.S. 288, 305 (2017). But to the extent legislative history is relevant here, it supports rather than rebuts Respondents' arguments regarding the plain language of § 1225.

discretionary detention authority. The two sections are not duplicative; instead, § 1226(a) applies to any alien who is present in the country but not an applicant for admission. In other words, it applies to any alien who was admitted, but then something happened that made them deportable under 8 U.S.C. § 1227(a) (listing classes of deportable aliens as "any alien . . . in and admitted to the United States" who fall under any of several classes of deportable alien). Some examples include aliens who violate their nonimmigrant status—e.g., a tourist, student visa holder, H-1B specialty occupations, and so on. *Id.* § 1227(a)(1)(c). These are aliens who were admitted into the country (so they are not applicants for admission) but then engaged in a deportable act such as overstaying their tourist visa, failing to comply with their student visa requirements, or losing their job that granted them H-1B status. Without § 1226(a), there would be no statutory authority for ICE to detain such alien.[10]

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[10] Since early July, several district courts have addressed ICE's interpretation of § 1225(b)(2), and many have rejected it. *Compare Rivera Zumba*, 2025 WL 2753496, at *9 (holding that a noncitizen residing in the United States for 20 years was not affirmatively "seeking admission" and therefore not subject to § 1225(b)(2)) *and Romero v. Hyde,* No. 25-11631, 2025 WL 2403827, at *1 (D. Mass. Aug. 19, 2025) (collecting cases holding that ICE's interpretation is "contrary to the plain text of the statute and the overall statutory scheme"), *with Pipa-Aquise v. Bondi*, No. 25-1094, 2025 WL 2490657, at *1 (E.D. Va. Aug. 5, 2025) (holding that noncitizen paroled in August 2021 and re-detained in May 2025 was an "applicant for admission" subject to mandatory detention under § 1225(b)) *and Pena v. Hyde,* No. 25-11983, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025) (upholding mandatory detention under §1225(b)(2) of noncitizen who "is present in the country but has not yet been lawfully granted admission").

In the end, Petitioner's argument is premised on the notion that § 1225(b) and § 1226(a) are mutually exclusive provisions. They are not. *See Vargas Lopez*, 2025 WL 2780351, at *7-9 (rejecting notion that the two provisions apply to distinct groups and concluding alien may properly be detained under § 1225(b)(2) even if also subject to § 1226(a)). Nothing in the text of the INA or *Jennings* supports the reading that detention under § 1225(b)(2) and § 1226(a) are mutually exclusive. *See id.* And here, "[e]ven if [Petitioner] might fall within the scope of § 1226(a), he certainly fits," for the reasons discussed above, "within the language of § 1225(b)(2) as well." *Id.* at *9; *see also id.* at n.5.[11]

II. Petitioner's Detention Does Not Violate the Due Process Clause

As discussed above, the INA authorizes Petitioner's detention under 8 U.S.C. § 1225(b)(2). Notwithstanding this statutory framework, Petitioner argues in Counts 2-4 that his continued detention without a bond hearing violates the substantive and

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[11] If the court holds that § 1226(a) applies to Petitioner, the appropriate remedy is a bond hearing conducted by an Immigration Judge, not immediate release. *See Valeriano v. Bondi*, No. 25-16100 (MAS), ECF No. 4 (D.N.J. Oct. 1, 2025), at 2. ("As Petitioner acknowledges, even under his reading of the relevant immigration statutes, he is still subject to detention under 8 U.S.C. § 1226(a), albeit with an entitlement to seek bond from an Immigration Judge. Should Petitioner prevail in this matter, the proper relief would constitute an order directing the Government to provide Petitioner with the bond hearing to which he contends he is entitled under § 1226(a)."); *cf. Barbot v. Warden Hudson Cnty. Corr. Facility,* 966 F.3d 274, 278–79 (3d Cir. 2018); *but see, e.g., Rivera Zumba*, 2025 WL 2753496, at *10–11 (ordering release and "temporarily enjoin[ing] respondents from re-arresting petitioner under . . . 8 U.S.C. § 1226(a) for 14 days after her release"). Moreover, contrary to Petitioner's suggestion, see Pet. ¶¶ 49, 66, the burden of proof in any such hearing falls on Petitioner. "Nothing in § 1226(a)'s text . . . even remotely supports the imposition" of the burden on the government to prove that an alien is a danger or a flight risk, much less by clear and convincing evidence. *Jennings*, 583 U.S. at 306.

procedural components of the Due Process Clause. *See* Pet. ¶¶ 57-68. The Court should reject this argument.

An applicant for admission who remains in the country unlawfully is entitled to due process rights. *See Pena v. Hyde*, No. 25-11983, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025) (citing *Wong Wing v. United States*, 163 U.S. 228, 238 (1896)); *see also Reno v. Flores*, 507 U.S. 292, 306 (1993). But those rights are coterminous "only to those rights and protections Congress set forth by statute"; the Due Process Clause "'requires nothing more.'" *Id.* (quoting *Thuraissigiam*, 591 U.S. at 140). That is because "the Constitution gives the political department of the government plenary authority to decide which aliens to admit, and a concomitant of that power is the power to set the procedures to be followed in determining whether an alien should be admitted." *Thuraissigiam*, 591 U.S. at 139 (citation omitted) (cleaned up). Those procedures authorize detention pending removal proceedings, see above, which is a "constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003).

Here, as discussed above, Petitioner is an "applicant for admission" under the plain text of the INA whose detention complies with § 1225(b)(2). This is particularly the case for Petitioner, who applied for asylum (and thus admission) before his arrest and detention. "And because Petitioner's detention complies with the relevant statutes, namely Section 1225(b), 'the Due Process Clause provides nothing more.'" *Pipa-Aquise v. Bondi*, No. 25-1094, 2025 WL 2490657, at *2 (E.D. Va. Aug. 5, 2025) (quoting *Thuraissigiam*, 591 U.S. at 140); *see also Thuraissigiam*, 591 U.S. at 138

(recognizing, as to, aliens who have never "been admitted into the country pursuant to law, the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law." (quotation omitted)).

Petitioner's detention without bond is also not unconstitutionally prolonged. Although "nothing in the statutory text imposes any limit on the length of detention" under § 1225(b)(2), *Jennings*, 583 U.S. at 297, courts within this District considering as-applied due process challenges under the statute have looked to whether the detention without bond has become so prolonged as to be considered unreasonable. *See Adel G. v. Warden, Essex Cnty. Jail*, No. 19-13512 (KM), 2020 WL 1243993, at *2 (D.N.J. Mar. 13, 2020) (collecting cases). That, in turn, asks whether the detention has become "so unreasonable as to amount to an arbitrary deprivation of liberty which cannot comport with the requirements of the Due Process Clause." *Id.* (quoting *Dryden v. Green*, 321 F.Supp.3d 496, 502 (D.N.J. 2018)). This is a high bar, and one which is not met here. While there is no "bright line rule which marks the border between constitutional and unconstitutional detention" under § 1225(b), several courts "within this district have previously found that detention for fifteen months or less is insufficient to support an as-applied challenge to detention under § 1225(b)." *Id.* (citing cases). Here, Petitioner has been in detention under 8 U.S.C. § 1225(b)(2) since September 24, 2025, which is less than a month. Petitioner's detention comports with due process. *See, e.g.*, *Pipa-Aquise*, 2025 WL 2490657, at *1 (holding "two-month detention" under § 1225(b) did not violate due process); *Cf. Zadvydas*, 533 U.S. at 690 (finding post-final-order detentions under six months presumptively reasonable);

German Santos v. Warden Pike Cnty. Corr. Facility, 965 F.3d 203, 210-11 (3d Cir. 2020) (holding that Due Process Clause demands a bond hearing only when detention pending removal under § 1226(c)—which, like § 1225(b)(2), requires mandatory detention—has become "unreasonably prolonged," which is "highly fact-specific inquiry," without a bright line).[12]

Petitioner's detention pending the conclusion of removal proceedings here is presumptively reasonable. But even if the Court were to conclude that detention under § 1225(b) has become "unreasonable" under the Due Process Clause, the appropriate remedy is a bond hearing conducted by an Immigration Judge, not immediate release. *See, e.g.*, *Akhmadjanov v. Oddo*, No. 25-35, 2025 WL 660663, at *5 (W.D. Pa. Feb. 28, 2025); *Rodriguez v. Bondi*, No. 25-791, 2025 WL 2490670, at *3 (E.D. Va. June 24, 2025). Respondents respectfully submit that if the Court finds Petitioner's detention is unreasonable, it should order an Immigration Judge to conduct a bond hearing rather than order Petitioner's immediate release.

CONCLUSION

For the foregoing reasons, the Court should dismiss or deny the Petition.

Respectfully submitted,

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12 Courts outside this District have held similarly. *See, e.g.*, *Rodriguez v. Bondi*, No. 25-791, 2025 WL 2490670, at *3 (E.D. Va. June 24, 2025) (collecting cases finding detentions under thirteen months § 1225(b) not unconstitutionally prolonged).

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